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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TIMOTHY KEMP,

07-CV-1085-~~PK~~ BR

Plaintiff,

ORDER

v.

MICHAEL J. ASTRUE,
Commissioner of Social
Security,

Defendant.

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BROWN, Judge.

This matter comes before the Court on the Commissioner's Motion to Dismiss (#11) Counts 2 and 3 of Plaintiff Timothy Kemp's Complaint. For the reasons that follow, the Court **GRANTS** the Commissioner's Motion to Dismiss.

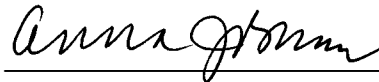
In Count One, Kemp seeks judicial review of the Commissioner's final decision pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3). In Count Two, Kemp alleges the Commissioner "failed, neglected and refused" to respond favorably to Kemp's request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for "any and all letters, memos, or other writings, however described, including those stored in computer memory, discussing the number of jobs issue that arises at step 5 of sequential evaluation." In Count Three, Kemp alleges the Commissioner violated Kemp's constitutional rights by "pretending to or actually relying on vocational expert testimony about numbers of jobs that the Commissioner knows or should know are unreliable" in violation of Kemp's "Fifth Amendment right to substantive due process and/or Ninth Amendment right to a government that is honest in fact and reasonably competent at what it undertakes to do."

The Commissioner moves to dismiss Counts Two and Three pursuant to Federal Rules of Civil Procedure 12(b)(1),

12(b)(6), and 12(c). The Court adopts the reasoning of the Honorable Ann Aiken in *Romans v. Astrue*, No. 06-CV-1331-AA (Opinion and Order issued May 16, 2007). See also *Randall v. Astrue*, No. 07-CV-37-BR (Order issued May 30, 2007). Accordingly, the Court **GRANTS** the Commissioner's Motion to Dismiss Counts Two and Three (#11).

IT IS SO ORDERED.

DATED this 18th day of December, 2007.

A handwritten signature in cursive script, appearing to read "Anna J. Brown", is written over a horizontal line.

ANNA J. BROWN
United States District Judge